

Coast Guard Safety Alert

Safety Alert Revision "A"

Passenger Vessel Safety Act (PVSA) of 1993 & Vessel Manning

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A. PVSA APPLIES TO CHARTERED VESSELS & ANY VESSEL CARRYING AT LEAST ONE PASSENGER FOR HIRE:

1. Passengers who are directly or indirectly **required to pay** monetary fees according to a charter agreement; or
2. Passengers who are **required to pay** or required to provide "**consideration**" such as a contribution of food, fuel or other supplies. **PVSA applies regardless if vessel is underway or moored.** Voluntary sharing of expenses not to exceed the cost of food, fuel or other supplies is allowable.

NOTE: Personal recreational Kayaks, Paddle Boats, Windsurfing Equipment & Canoe rentals, having not more than six passengers are *generally* not required to comply with the PVSA of 1993 (as long as the recreational equipment is not outfitted with mechanical propulsion). Jetskis, operated solely by the renter, generally are not required to comply with the PVSA, unless the jetskis operator uses it to carry passengers for hire.

B. BELOW ARE EXAMPLES OF VESSELS THAT MAY BE CHARTERED AND / OR CARRY PASSENGERS FOR HIRE*:

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| 1. Dinner Cruises | 7. Anchorage or Restaurant Shuttle/Limousine Service |
| 2. Passenger Fishing Vessels | 8. Home Owner Association Vessel Shuttle Service |
| 3. Private Vessel Moored / Overnight Accommodation | 9. Passenger Excursion or Sailing School Vessels |
| 4. Private Vessel Tours | 10. Parasailing, Wake-boarding or Water-ski Vessels |
| 5. Repair Yard Shuttle Service | 11. Charter Boat Rentals ** |
| 6. Balloon-ride Shuttle Service | 12. Towing, Salvage or Assist Vessels ** |

* Vessel means any self-propelled (motor) watercraft (including sailing vessel outfitted with mechanical propulsion).

** Vessels (11-12) generally do not carry passengers for hire, however, must comply with the PVSA if passengers for hire are carried. However, vessels (1-10) are generally known to carry passengers for hire. See #5 on pg. (2) for further clarification to determine if the vessel is chartered.

C. BASIC LAW AND REGULATIONS ACCORDING TO 46 USC (MANNING REQUIREMENTS) AND THE PVSA:

1. The following vessels, operated on U.S. Navigable Waters, must be operated by a U.S. Coast Guard Licensed Master: (a) Vessels carrying passengers or cargo for hire; (b) Assist towing vessels of any length, towing disabled vessels; (c) Uninspected towing vessels of 26ft or more. **No Exceptions.** Reference 46 CFR §15.410, 15.605 and 15.610.
2. Uninspected Passenger Vessels (UPV's) of less than 100 GT may carry a maximum of six passengers. If one passenger contributes "consideration", all persons are considered passengers on board a (UPV) because the definition of a UPV only requires that one of the passengers provides consideration. See exemptions under #3 below to determine persons who are not passengers.
3. To determine the number of passengers, **all persons are passengers** with the following exemptions (46 USC 2101 (21)(A)):
 - a. Master and Crew
 - b. Vessel Owner **or** Person qualified as Charterer

PVSA DEFINITIONS & MANNING REQUIREMENTS

1. **PASSENGER:** 46 USC 2101(21) “(A) an individual carried on the vessel except “(i) the owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer; (ii) the master; or (iii) a member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for on board services.”

2. **PASSENGER FOR HIRE:** 46 USC 2101 (21a) “a passenger for whom “**consideration**” is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.”

3. **CONSIDERATION:** 46 USC 2101 (5a) “an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.” Note: Generally, some tangible amount of worth exchanged for carriage on a vessel such as payment, exchange of goods or a promise of performance is required. “Consideration” does not include a **voluntary** sharing of the actual expenses of a voyage.

4. **MASTER & CREW REQUIREMENTS:** Regulations must be followed when carrying passengers or freight for hire, regardless if the vessel is chartered.

A. Master & Crew must be qualified as per Coast Guard regulations (46 CFR 15.401).

B. Master & Crew must be in the company’s random drug testing program (46 CFR 16.230).

C. Master & Crew must meet the definition of crew as stated in 46 USC 2101 (A) (iii): Crew must be paid for their services and may not contribute “consideration”. Requirements (a-c) must be true, otherwise persons are deemed passengers. See exemptions as stated under #3 of Section (C) on pg (1).

5. **CHARTERED VESSELS AND CHARTER AGREEMENT CLARIFICATION:** A charter is an agreement where the charterer has the use of the vessel and may take on legal obligations, to the vessel owner, the crew, passengers carried, or others. If the charter or rental is not controlled by a written agreement, or if “consideration” is received for the carriage of individuals on board, the vessel will be considered as carrying “passengers for hire.” To be considered a valid bareboat charter, the incidents of ownership must be transferred to the charterer. The elements listed below are indicative but not conclusive of a valid bareboat charter arrangement.

A. The charterer must have the option of selecting the crew.

B. The master and crew are paid by the charterer.

C. All food, fuel, and stores are provided by the charterer.

D. All port charges and pilotage fees, if any, are paid by the charterer.

E. Insurance is obtained by the charterer, at least to the extent of covering liability not included in the owner's insurance. A greater indication of full control in the charterer is shown if all insurance is carried by the charterer (of course, the owner retains every right to protect his or her interest in the vessel).

F. The charterer may discharge, for cause, the master or any crew member without referral to the owner.

G. The vessel is to be surveyed upon its delivery and return.

Any provision that tends to show retention of possession or control of the vessel, such as the owner of the vessel being aboard during the charter of the vessel, contradicts the claim that a valid bareboat charter exists.

6. **CREW NOT PROVIDED BY THE OWNER OR OWNER’S REPRESENTATIVE:** This condition exists when the charterer exercises direct control over the selection, payment, and retains the authority to dismiss the crew for cause. The owner of the vessel may offer suggestions to, however, may not exercise the above control reserved for the Charterer. The owner of the vessel may require minimum general levels of proficiency for whatever crew is retained based on federal statute (i.e., licenses, merchant mariner documents, etc.) in the interest of ensuring the vessel is manned by a competent crew according to regulation.

PASSENGER VESSEL SAFETY ACT COMPLIANCE MATRIX

Step 1A & 1B: Determine the vessel's gross tonnage and number of passengers. Everyone on board the vessel is considered a passenger except the individual owner **or** charterer (not both), the master and the crew. (See #1 of pg (2) for definition)

Step 2: Is the vessel used to carry passengers for hire? (See #2 of pg (2) for definition.) Note: Vessels rented or chartered are generally chartered vessels only and do not carry passengers for hire. However, if a vessel is chartered by an operator who requires consideration or payment from any of the passengers, then the vessel is "chartered with passenger for hire". (Refer back to definition of consideration, if needed)

Step 3: After determining whether the vessel is carrying passengers for hire, confirm if the vessel is operating under a valid charter agreement? If no, refer to the "No Charter" block to determine vessel category. If yes, refer to the appropriate column: "Chartered with crew" or "Chartered without crew".

Step 4A & 4B: Is the crew of the vessel to be provided or specified by the vessel's owner or owner's representative? If the charterer **does not** exercise direct control over the selection and payment of the master and crew, and **does not** retain the authority to dismiss the crew, then the crew has been provided and the vessel is chartered (with crew).

<u>COMPLIANCE MATRIX</u>					
(STEP #1A) GROSS TONS	(STEP #1B) NUMBER OF PASSENGERS	(STEP #2) PASSENGERS FOR HIRE	(STEP#3) NOT CHARTERED	(STEP #4A) CHARTER W/CREW	(STEP #4B) CHARTERED W/O CREW
Less than 100	Less than or equal to 6	YES	UPV	UPV	UPV
Less than 100	More than 6	YES	SPV	SPV	SPV
Less than 100	7-12	NO	REC***	SPV	REC***
Less than 100	More than 12	NO	REC***	SPV	SPV
Submersible vessel less than 100	One (1) or more	YES	SPV	SPV	SPV
Greater than or equal to 100	Less than or equal to 12	YES	UPV	UPV	UPV
Greater than or equal to 100	Less than or equal to 12	NO	REC***	UPV	REC***
Greater than or equal to 100	More than 12	YES	PV	PV	PV
Greater than or equal to 100	More than 12	NO	REC***	PV	PV
Submersible vessel greater than or equal to 100	One or more	YES	PV	PV	PV

VESSEL REQUIREMENTS — (REFER BACK TO #4 OF PG (2) FOR VESSEL CREW REQUIREMENTS)

- RECREATIONAL VESSEL (REC)** - Used for pleasure purposes only; see further description under #1 of pg (4).***
- UNINSPECTED PASSENGER VESSEL (UPV)** - No inspection required; licensed master required; maximum six passengers (exceptions noted in matrix).
- SMALL PASSENGER VESSEL (SPV)** - Less than 100GT; inspection required; must have valid Certificate of Inspection (COI); must be operated by licensed master; must be operated by crew specified on (COI); may not carry more than number of passengers allowed on vessel's (COI).
- PASSENGER VESSEL (PV)** - Greater than or equal to 100GT; inspection required; must have valid Certificate of Inspection (COI); licensed master required; must be operated by crew specified on (COI); may not carry more than number of passengers allowed on vessel's (COI).

EXPANDED - VESSEL DEFINITIONS

1. RECREATIONAL VESSEL (REC) A vessel is considered recreational (REC) only if it is not used to carry passengers for hire. 46 USC 2101 (25) states:

“(A) recreational vessel means a vessel being manufactured or operated primarily for pleasure; or

(B) leased, rented or chartered to another for the latter’s pleasure.”

REQUIREMENTS:*** Recreational vessels do not require inspection. Chartered recreational vessels (of less than 100GT) may only carry a maximum of six passengers when they are chartered with crew provided. Also, the vessel charterer / operator may not require “consideration” from any of the passengers. See definitions for “consideration” on pg (2). According to the compliance matrix, (REC) vessels may carry up to twelve passengers (only if the vessel has been chartered with no crew provided and there are no passengers for hire). Once a vessel carries passengers for hire, it can no longer be classified as a recreational vessel and must meet applicable requirements for vessel manning and inspection according to the vessel type (UPV), (SPV) or (PV). In addition, **the capacity plate on a recreational vessels may not apply to chartered (REC) vessels.** For example: if the passenger limitation as per the PVSA compliance matrix is six passengers, but the limitation on the vessel’s capacity plate is eight, the vessel may only carry six passengers. Note: Recreational vessels operated by family or friends (that are not chartered / rented or carrying passengers for hire) may have the number of passengers on board as per the vessel’s passenger capacity plate.

2. UNINSPECTED PASSENGER VESSEL (UPV) - 46 USC 2101(42) - Vessel requirements are different according to vessel tonnage.

“(A) a vessel of **at least 100 gross tons** (i) carrying not more than 12 passengers, including at least one passenger for hire; or (ii) that is chartered with the crew provided or specified by the owner and carrying not more than 12 passengers; or

(B) a vessel of **less than 100 gross tons** (i) carrying not more than 6 passengers, including at least one passenger for hire; or (ii) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 6 passengers.”

REQUIREMENTS: (No inspection required; licensed master required; maximum six passengers for vessels less than 100 GT; exceptions noted in matrix.)

3. SMALL PASSENGER VESSEL (SPV) - 46 USC 2101(35) - A vessel of **less than 100 gross tons** that is:

“(A) carrying more than 6 passengers including at least one passenger for hire;

(B) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers;

(C) that is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers; or

(D) that is a submersible vessel carrying at least one passenger for hire.”

REQUIREMENTS: (Inspection & valid Certificate of Inspection (COI) required to operate with passengers for hire or as a chartered vessel with crew provided & carrying over six passengers; SPV’s must be operated by a licensed master; see vessel’s (COI) for crew requirements & passengers limit (46 USC 3301 & 8902.)

4. PASSENGER VESSEL (PV) - 46 USC 2101(22) - A vessel of **at least 100 gross tons**:

“(A) carrying more than 12 passengers, including at least one passenger for hire;

(B) that is chartered and carrying more than 12 passengers; or

(C) that is a submersible vessel carrying at least one passenger for hire.”

REQUIREMENTS: (Coast Guard inspection required; must have valid Certificate of Inspection (COI) to operate with passengers for hire; must be operated by a licensed master and the crew as specified on vessel’s (COI); may not carry more than passenger limit as per vessel’s (COI). See 46 USC 3301 & 8903.

5. SUBMERSIBLE VESSEL – 46 USC 2101 (37a) “submersible vessel means a vessel that is capable of operating below the surface of the water.”

**THE ABOVE IS A SAFETY ALERT FROM YOUR LOCAL COAST GUARD OFFICE
SHOULD YOU HAVE ANY QUESTIONS, PLEASE CONTACT US DIRECTLY
THANK YOU & HAVE A SAFE BOATING DAY t**